Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Text

CONFIDENTIAL

PAGE 01 MANILA 13581 01 OF 02 151202Z

12
ACTION EA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-04 NSC-05 RSC-01

CIEP-01 TRSE-00 SS-15 STR-01 OMB-01 CEA-01 CIAE-00

COME-00 FRB-01 INR-05 NSAE-00 XMB-02 OPIC-03 LAB-01

SIL-01 AGR-05 FEA-01 AEC-05 DODE-00 FPC-01 H-01

INT-05 L-02 PM-03 SAM-01 OES-03 /087 W
---------- 119226
R 150938Z NOV 74
FM AMEMBASSY MANILA
TO SECSTATE WASHDC 8431

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 13581

E.O. GDS
TAGS: EINV, RP
SUBJECT: PROPOSED NEW FOREIGN INVESTMENT REGULATIONS

REF: A) MANILA 12761 B) STATE 243966

SUMMARY

PROPOSED GUIDELINES WOULD IMPLEMENT PRESIDENTIAL DIRECTIVE OF JUNE 14. IF ADOPTED AS PRESENTLY WORDED, ALL COMPANIES WHICH HAVE GOP APPROVAL TO EXPLOIT NATURAL RESOURCES, INCLUDING LEASES OF PUBLIC AGRICULTURAL LAND FROM DEPT. OF NATURAL RESOURCES, WOULD BE AFFECTED. IN CASES WHEHRE COMPANY HOLDS CONCESSION OR LEASE WHICH HAS NOT BEEN WORKED, NEW RULES WOULD TAKE EFFECT WITHIN ONE YEAR. COMPANIES NOW WORKING HOLDING WOULD BE REQUIRED, UNDER GUIDELINES, TO REDUCE FOREIGN EQUITY WITHIN FIVE YEARS (OR LESS IF LICENSE OR LEASE EXPIRES BEFORE THEN). GUIDELINES AS WRITTEN WOULD NOT SEEM TO APPLY TO HOLDERS OF PETROLEUM EXPLORATION SERVICE CONTRACTS BUT GOP PRESENTLY SEEKING AT LEAST 70 PERCENT OF SHARE FROM NEW CONTRACTS AND WHERE POSSIBLE REQUIRING RENEGOTIATION OF PREVIOUS CONTRACTS. POTENTIAL INVESTORS WOULD UNDOUBTEDLY
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 MANILA 13581 01 OF 02 151202Z

FIND REQUIREMENT TO GUARANTEE SALE OF OUTPUT AT WORLD MARKET

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

PRICE DIFFICULT TO ACCEPT. STRONG ADVERSE REACTION ON PART MINING INDUSTRY TO THIS AND OTHER FEATURES PROPOSED GUIDELINES COULD SHOOT DOWN WHAT MAY WELL BE TRIAL BALLOON BUT EXISTENCE OF PRESIDENTIAL DIRECTIVE COULD MEAN GOP WILL FIND IT DIFFICULT TO TAKE BACKWARD STEP. RANKING TECHNOCRAT REPORTS PROPOSED NEW GUIDELINES PROMPTED BY RISING CONCERN ABOUT JAPANESE ENTRY INTO RESOURCE SECTORS, BUT SAYS DECISION BY NO MEANS FINAL. HOWEVER, SEVERAL INTERESTED INVESTORS HAVE DECIDED TO STAND BACK FOR THE MOMENT AND SEE HOW THE PROPOSED DIRECTIVE FARES. END SUMMARY.

1. PROPOSED REGULATIONS STEM FROM HAND WRITTEN DIRECTIVE OF PRESIDENT MARCOS DATED JUNE 24, 1974 TO SECRETARY OF INDUSTRY, SECRETARY OF NATURAL RECOURCES, SECURITIES AND EXCHANGE COMMISSIONER, DIRECTOR OF NEDA AND GOVERNOR OF CENTRAL BANK. DIRECTIVE "LEAKED" IN HAND WRITTEN FORM TO KEY BUSINESS MEN.

2. TEXT OF HAND WRITTEN PRESIDENTIAL DIRECTIVE FOLLOWS: QUOTE: HENCEFORTH THE FOLLOWING POLICY WILL BE FOLLOWED IN THE ALLOWANCE OF INVESTMENTS FROM ABROAD IN CORPORATIONS HOLDING LICENSES OR CONCESSIONS FOR THE DEVELOPMENT OR EXPLOITATION OF NATURAL RESOURCES WHICH CORPORATIONS MUST BE 60 PERCENT OWNED BY FILIPINO NATIONALS UNDER THE CONSTITUTION.

1. ALIEN OWNERSHIP OF EQUITY SHALL BE LIMITED TO THIRTY (30) PERCENTUM.
2. WHEN THE ALIEN EQUITY HOLDER FURNISHES OR OBTAINS ALL THE REQUIRED FINANCING FOR THE WHOLE PROJECT, THE FILIPINO CORPORATION OR PARTNERS CAN COMMIT TO PAY SUCH FUNDS, IF BORROWED, WITH 50 PERCENT OF THE PRODUCTION OF THE CORPORATION VALUED AT WORLD MARKET PRICES, PROVIDED THAT IF FOR ANY REASON THE ALIEN EQUITY HOLDER DOES NOT PURCHASE THE PRODUCTION AT WORLD MARKET PRICES, THEN THE FILIPINO CORPORATION OR PARTNERS MAY SELL THE SAME TO OTHER BUYERS.
E. THE ALIEN SUPPLIER OF MACHINERY AND OTHER EQUIPMENT MUST GUARANTEE PURCHASE AT WORLD MARKET PRICES OF ALL THE PRODUCTION OF SUCH MACHINERY SUPPLIED, IF SUCH MACHINERY IS THE MAIN MEANS OF PRODUCTION. UNQUOTE.
CONFIDENTIAL

CONFIDENTIAL

3. ALTHOUGH PROPOSED GUIDELINES HAVE NOT BEEN ISSUED, TO EMBASSY'S KNOWLEDGE, JUNE 24 DIRECTIVE HAS BEEN USED ON AT LEAST TWO OCCASIONS BY CENTRAL BANK TO ADVISE MINING COMPANIES WITH 40 PERCENT FOREIGN EQUITY OF "GOVERNMENT POLICY" RESTRICTING FOREIGN OWNERSHIP OF 30 PERCENT. COMPANIES SO ADVISED BY CB ARE DENNISON MINES OF CANADA, AND GLOBAL MINING AND DEVELOPMENT CORP., A SUBSIDIARY OF US GLOBAL

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

MARINE CORP.

4. IN CASE OF DENNISON, AFTER COMPANY PROTESTED TO BOARD OF INVESTMENTS, SECRETARY OF INDUSTRY (ALSO CHAIRMAN OF BOI) PATERNO IN OCT. 16 LETTER AGREED THAT VENTURE COULD PROCEED ON 60-40 BASIS BECAUSE "DRAFT AGREEMENT WAS SUBMITTED TO CENTRAL BANK PRIOR TO THE DATE THAT PREVIOUS AGENCIES OF THE GOVERNMENT ADOPTED AS A GUIDELINE THAT PARTICIPATION BY FOREIGNERS IN THE EXPLOITATION OF OUR NATURAL RESOURCES

SHOULD BE LIMITED TO NOT MORE THAN 30 PERCENT."

5. TO NOW EMBASSY HAS BEEN UNABLE DETERMINE DATE PROPOSED GUIDELINES WERE SUBMITTED TO VARIOUS CABINET OFFICIALS FOR SLINATURE BUT MOST LIKELY IT WAS SUBSSUUENT TO SEPTEMBER 6 ON WHICH DATE MEMO WENT TO PRESIDENT MARCOS FROM NEDA DIRGEN. SICAT. THAT MEMO CONTAINS THE ESSENTIAL ELEMENTS OF PROPOSED GUIDELINES THEMSELVES PROBABLY DRAWN UP IN BOI.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 MANILA 13581 02 OF 02 151233Z

12
ACTION EA-10

INFO OCT-01 ISO-00 SP-02 AID-05 EB-04 NSC-05 RSC-01

CIEP-01 TRSE-00 SS-15 STR-01 OMB-01 CEA-01 CIAE-00

COME-00 FRB-01 INR-05 NSAE-00 XMB-02 OPIC-03 LAB-01

SIL-01 AGR-05 FEA-01 AEC-05 DODE-00 FPC-01 H-01

INT-05 L-02 PM-03 SAM-01 OES-03 /087 W
---------- 119573
R 150938Z NOV 74
FM AMEMBASSY MANILA
TO SECSTATE WASHDC 8432

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 13581

6. SCOPE OF POLICY AND DEFINITION OF "NATURAL RESOURCES" ARE SUCH THAT ALL FIRMS WITH MORE THAN 30 PERCENT FOREIGN EQUITY COULD BE AFFECTED. WITHIN 5 YEARS IN THE CASE OF FIRMS ACTUALLY EXPLOITING A CONCESSION (PART IV, PARA. I)

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

OR IF CONCESSION NOT YET DEVELOPED WITHIN ONE YEAR (PART III).

7. PRESENT WORDING OF DIRECTIVE WOULD ALSO COVER US FIRMS WHICH HAVE PUBLIC LAND LEASES. WHILE SICAT'S MEMO EXCLUDES EXISTING ENTERPRISES WITH VALID LEASES ISSUED BEFORE JUNE 14, 1974 FROM DIRECTIVE UNTIL LEASE IS RENEWED, IT SHOULD BE NOTED THAT OFFICIAL GOP POSITION IS THAT ALL SUCH LEASES EXPIRED ON JULY 3, 1974 AND ONLY PRESIDENTIAL POLICY STATEMENT REQUIRING STATUS QUO PROTECTS SUCH FIRMS UNTIL MAY 27, 1975. WHILE THE OVERALL PUBLIC LAND LEASE ISSUE VIS A VIS U.S. FIRMS STILL UNRESOLVED, NEVERTHELESS, UNDER PRESENT WORDING OF DIRECTIVE THE 70-30 REQUIREMENT COULD IMMEDIATELY BE APPLICABLE TO MANY U.S. FIRMS, ALONG WITH REQUIREMENT THAT 5 YEARS FIRMS EITHER ACHIEVE 70-30 EQUITY OR SEPARATE PUBLIC LEASES FROM COMPANY.

8. MOST PHILIPPINE MINING COMPANIES EXIST BECAUSE OF CONFIDENTIAL

CONFIDENTIAL

WILLINGNESS OF FOREIGN INVESTORS TO PROVIDE MONEY AND EQUIPMENT AT FAVORABLE TERMS IN EXCHANGE FOR PRODUCTION AT PRICE OVER WHICH THEY HAVE CONTROL. GUIDELINES WOULD RESTRICT THOSE ADVANTAGES AND COULD PERSUADE POTENTIAL INVESTORS THAT THEY WOULD NOT PROFIT, AT LEAST AT PREDICTABLE RATES OR RATES FULLY REFLECTIVE OF MARKET CONDITIONS, FROM SUCH ARRANGEMENT. EQUIPMENT PROVISION WOULD MOST AFFECT JAPANESE, WHILE OTHERS SUCH AS U.S. AND CANADIANS WOULD BE HIT BY PROVISION LIMITING AMOUNT OF PRODUCTION WHICH COULD BE USED TO SERVICE DEBT.

9. ALTHOUGH DIRECTIVE AND GUIDELINES DO NOT SPECIFICALLY INCLUDE OR EXEMPT PETROLEUM SERVICE CONTRACTS (SINCE NO CONTRACTORS HAVE FOUND PETROLEUM, THERE IS NO EXPLOITATION OR DEVELOPMENT---ONLY EXPLORATION) PRESENT PRACTICE OF GOP DE FACTO EXTENDS 70-30 GUIDELINE TO SERVICE CONTRACTORS. RECENTLY COMPANIES NEGOTIATING WITH GOP, INCLUDING RENEGOTIATIONS, HAVE BEEN TOLD THAIGONTRACT MUST INCLUDE CUT FOR PHILIPPINENATIONAL OIL COMPANY (IN TWO CASES THUS FAR REPORTEDLY 15 PERCENT). ALL CONTRACTS MUST GIVE PNOC SHARE OF AT LEAST 10 PERCENT OVER AND ABOVE 60 PERCENT GOP SHARE CALLED FOR IN PRESIDENTIAL DECREE 87.

10. LOCAL MINING COMPANY OFFICIALS HAVE INDICATED THAT THEY OPPOSE POLICY. SEVERAL HAVE VOICED CONCERN TO GOP OFFICIALS, AND IN ONE CASE, BENGUET CONSOLIDATED, FILIPINO OFFICER WROTE TO SEC. PATERNO GIVING LEGAL ARGUMENT AGAINST MOVE. OTHERS HAVE POINTED OUT THAT CONTINUATION OF POLICY WILL DEFLECT INVESTMENT AND STUNT POTENTIAL DEVELOPED MINING SECTOR.

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

COMMENT:

1. AS ABOVE INDICATES COPIES OF MARCOS DIRECTIVE, NEDA MEMO AND PROPOSED GUIDELINES, AS WELL AS LETTERS FROM CB AND MINING COMPANIES ARE FREELY PASSING FROM HAND TO HAND. (EMBASSY COPIES HAVE COME FROM PRIVATE SECTOR SOURCES). WOULD APPEAR THAT GOP SOUGHT TO TEST WATER BEFORE FORMALLY ADOPTING POLICY. WHILE ADVERSE REACTION MAY HAVE, FOR NOW, CAUSED GOP TO RECONSIDER GUIDELINES, ATTEMPT INDICATIVE OF UNDERLYING ATTITUDE ON PART OF GOP THAT POTENTIAL FOR
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 MANILA 13581 02 OF 02 151233Z

FOREIGN CONTROL OVER EXPLOITATION NATURAL RESOURCES CHOULD BE REDUCED. RECENT DISCUSSION OF PROPOSED DIRECTIVE WITH INDUSTRY SEC. PATERNO INDICATES THAT DECISION ON SCOPE IS NOT YET AGREED ININ THE CABINET, AND A SPECIFIC DEBATE EXISTS ON MINING. ALL EXISTING FIRMS HAVE PROTESTED DIRECTLY AS WELL AS BY INDICATIONS OF SLOWDOWNS IN MAJOR PROJECTS.

12. PATERNO STATES THAT MAIN IMPETUS TO NEW POLICY FLOWS FROM RECENT HEAVY-HANDED SHOWS OF JAPANESE INTERST, ESPECIALLY IN FOREST PRODUCT LINES, BUT APPARENTLY GENERALLY IN JAPANESE EXPRESSION LOCALLY OF RESOURCE DIPLOMACY. IN THE FINAL ANALYSIS, THIS NEW PLAY APPEARSANOTHER TEST OF WHAT THE TRAFFIC WILL BEAR. SO FAR WOULD BE INVESTORS HAVE DEFENDED THEMSELVES VERY WELL, BUT WE WOULD NOT TAKE THAT NECESSARILY AS THE END OF THE MATTER.
ARNOLD

CONFIDENTIAL

NNN

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW, TEXT, INSTRUCTIONS, POLICIES, EXPLOITATION (NATURAL RESOURCES), FOREIGN INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 15 NOV 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974MANILA13581
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740330-0374
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741140/aaaabhpm.tel
Line Count: 257
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A) MANILA 12761 B) STATE 243966
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 09 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09-Aug-2002 by cunninfx>; APPROVED <14 MAR 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PROPOSED NEW FOREIGN INVESTMENT REGULATIONS
TAGS: EINV, RP
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005